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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOSE LUIS MORALES,
Plaintiff, No. C 06-4175 PJH (PR)
v.
PELICAN BAY STATE PRISON,
JACQUEZ, FERGUSON, and
COLEMAN,
Defendants.

**ORDER DENYING MOTION
TO DESIGNATE ACTION AS
A STRIKE**

This civil rights case filed pro se by a state prisoner was dismissed and closed in 2010 when the court granted defendants' motion for summary judgment. The dismissal was affirmed by the Ninth Circuit (Docket No. 107), the Ninth Circuit denied the petition for panel rehearing (Docket No. 108) and the Supreme Court denied the petition for a writ of certiorari (Docket No. 112). Since the case was closed, plaintiff has filed several frivolous motions in this court that have been denied and appeals to the Ninth Circuit that are pending. Defendants have now filed a motion to designate this action as a 'strike' pursuant to 28 U.S.C. § 1915, due to plaintiff's actions after this case was closed.

As noted above, this case was closed when summary judgment was granted to defendants. Yet, a grant of summary judgment alone, is not a determination that the action was frivolous, malicious or failed to state a claim. See *Martinez v. U.S.*, 812 F.Supp.2d 1052, 1057 (C.D. Cal 2010); *Barela v. Variz*, 36 F.Supp.2d 1254, 1259 (S.D. Cal.1999); see also *Hardney v. Lamarque*, 2007 WL 2225996 *2 (E.D.Cal. 2007). The court did not find that plaintiff's case was frivolous or malicious when summary judgment was granted and

1 the court will not alter its decision.¹ Defendants' motion (Docket No. 121) is **DENIED**. As
2 stated in a prior order, the court will not entertain any future filings from plaintiff in this case.

3 **IT IS SO ORDERED.**

4 Dated: June 24, 2014.


5 PHYLLIS J. HAMILTON
United States District Judge

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28 ¹ The Ninth Circuit also recently denied defendants' motion to certify the appeal as
frivolous or malicious. Docket No. 126